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			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 03/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/817,049

Applicant(s)

SCOTT ET AL.

Examiner

Jenna-Leigh Befumo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 28-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 09/529,464.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, claims 1 - 27 in the response filed on December 17, 2004 is acknowledged. The traversal is on the grounds that the claims have the same inventive concept as embodied by the fabric of claim 1. This is not found persuasive because the claims do not need to be restricted based on lack of unity practice since this case is the continuation of a national stage case and not the national stage case itself. Therefore, the claims are restricted by standard and US practice which does not group claims based on inventive concept per se.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show woven fabric layer 12, in Figure 1, as described in the specification, page 15, lines 22 – 28. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to because on page 16, line 10 of the specification, the reinforcement web is described as reference number 22. However, the reinforcement web is described as layer 20 in the rest of the specification and the 22 is described as the backing fabric. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

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4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "12" and "112" have both been used to designate woven fabric. Is there some difference when 112 is used to describe the fabric. Further, on page 31, lines 25 – 30, the fabric layer in Figure 4 which is 112 was referred to as 12. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "12" has been used to designate both woven fabric and the stabilizing layer. On page 27, line 5 the stabilizing layer is listed described as 12. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
6. The drawings are objected to because the roll 26 described as being in Figure 4 on page 31, line 21, is not in the figure. Should the number be 126, which is shown in Figure 4, but not described, instead? A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
7. The drawings are objected to because In the description of Figure 4 on page 31, the specification refers to Figure 2, on line 20. Is this a typo, which should read Figure 4? Or, is the Applicant comparing the process to what is shown in Figure 2? A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
8. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference signs not mentioned in the description: 115, shown in Figure 3

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and 126 shown in Figure 4. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

9. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.
10. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claims 19 recites that the composite further comprise a resilient layer between the fabric top layer and the backing layer. However, in the specification and the figures, the Applicant only discloses using the resilient layer between the backing layer and the backing fabric. And even though the Applicant discloses multiple configurations, the Applicant does not suggest placing the resilient layer between the top layer and the backing layer.

Claim Objections

11. Claim 8 is objected to because of the following informalities: the Applicant uses the abbreviation PTT to described poly(trimethylene terephthalate). It is suggested the Applicant avoid the use of the abbreviation and write out the full chemical name. Appropriate correction is required.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

13. Claims 1, 3, and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Vinod (5,965,232).

Vinod discloses a composite floor covering comprising a decorative fabric upper layer, a stabilizing layer and a lower cushioning layer (abstract). The decorative fabric is a textile layer composed of yarns, fibers, or filaments with an upper and lower surface with a decorative and pleasing aesthetic appearance (column 2, lines 45 – 48) The decorative fabric can be woven fabrics made from materials such as nylon or polyester fibers (column 3, lines 17 – 25. As shown in Example 2, the decorative fabric can be made on a jacquard loom. The decorative layer is coated with a protective coating on the upper and lower sides (column 2, lines 50 – 58). The coating applied to the lower surface of the fabric corresponds to the Applicant's backing layer. The lower surface is attached to a stabilizing layer (column 2, lines 58 – 60). The stabilizing fabric is a scrim or sheet comprising fibrous nonwoven material such as fiberglass, which has good tensile strength and moisture stability (column 5, lines 46 – 52). The stabilizing fabric corresponds to the Applicant's backing fabric. Therefore, claims 1, 3, and 4 are rejected.

14. Claims 1, 2, 9, 10, 11, 16, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Cooney (3,823,056).

Cooney discloses a floor covering comprising a fibrous layer, a primary backing, a latex pre-coat layer, an antistatic layer, a polymeric backing layer, and a secondary backing fabric as shown in the Figure. The fibrous pile layer can be a woven fabric which comprises polyester yarns (column 3, lines 13 – 19). The backing layer is usually a woven fabric of cotton or jute (column 3, lines 20 – 22). The pre-coat layer applied to the underside of the fabric can be a latex layer made from acrylic, vinyl acetate, or other latex materials (column 3, lines 60 – 65). The polymeric backing is also a latex material such as a natural rubber latex or other materials (column 3, line 70 – column 4, line 7). Therefore, claims 1, 2, 9, 10, 11, 16, and 19 are anticipated by Cooney.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 1, 2, 9, 16, 19, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Terry et al. (WO 93/08325) in view of Hamilton et al. (5,198,277).

Terry et al. discloses a carpet tile comprising tufted carpet layer having a primary backing fabric and a latex pre-coat layer (page 12, lines 1 – 5). The carpet layer is attached to backing composition comprising a urethane modified bitumen layer, next to a glass tissue layer, next to another urethane modified bitumen layer, next to a secondary backing layer (page 12, lines 22 – 33). Terry et al. fails to teach the fabric construction of the primary backing layer. Carpet backing layers are well known in the art. Hamilton et al. is drawn to carpet tiles. Hamilton et al.

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discloses carpets are made with backing layers made from woven fabric such as polyester (column 6, lines 38 – 39). Additionally, woven fabrics are known to have good stability and strength in the warp and weft directions. This helps to stabilize a carpet during tufting and additionally processing. Therefore, it would have been obvious for one having ordinary skill in the art to use as a woven fabric primary backing in the carpet tile taught by Terry et al. to produce a stable carpet which can be easily processed without becoming distorted. Thus, the pre-coat layers, bitumen layers, and additionally reinforcing layer set forth above would be below the primary backing made from a woven fabric. Therefore, claims 1, 2, 9, 16, 19, and 20 are rejected.

Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the claimed weight of the bitumen layer, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955). One of ordinary skill in the art would optimize the weight of the layer to improve the resiliency and strength of the composite without making the composite too stiff or too heavy so it to be easily used as a carpet tile. Thus, claim 21 is rejected.

17. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vinod.

The features of Vinod have been set forth above. Vinod discloses that the yarns used in the decorative layer can have a total denier of 40 – 500 in the warp direction and a total denier of 100 – 4000 in the weft direction (column 3, lines 35 – 40). The denier per filament should be in the range of 8 to 28 denier (column 3, lines 34 – 36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the claimed denier, since it has been held that where the general conditions of a claim are disclosed in the prior art,

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discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955). One of ordinary skill in the art would modify the denier range of the yarns and filaments to change the texture, appearance, and hand of the woven fabric. Also, one of ordinary skill would want to optimize the strength and abrasion resistance of the filaments and yarns without making the fabric feel too rough or uncomfortable. Therefore, claims 6 and 7 are rejected.

18. Claims 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vinod in view of Howell et al. (5,645,782).

The features of Vinod have been set forth above. Vinod fails to teach the type of polyester materials that can be used in the decorative fabric. Howell et al. is drawn to types of polyester fibers used in flooring materials. Howell et al. discloses that poly(trimethylene terephthalate) (PTT) has excellent stain resistance, texture retention, and resistance to crushing (abstract). Further the yarns can be used in carpet or floor covering materials (column 1, lines 9 – 13). Howell et al. discloses that PTT has built-in stain resistance, texture retention, and resistance to crushing which is superior to similar polyester yarns such as poly(ethylene terephthalate) (column 1, lines 39 – 45). Therefore, it would have been obvious for one having ordinary skill in the art to use PTT as the type of polyester fiber in the floor covering taught by Vinod since PTT has improved stain resistance, texture retention, and resistance to crushing. Thus, claims 5 and 8 are rejected.

19. Claims 1 – 4, 9 – 12, 15 – 19, and 22 – 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins (WO 95/23691) in view of Vinod.

Higgins discloses a cushion-backed flooring composite material shown in Figures 3A to 4B. The flooring material comprising a pile fabric which is formed by combining pile yarns 120

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to a backing material 122. Thus, backing material corresponds to the Applicant's woven top layer. The backing is coated with a pre-coat layer of latex or hot melt adhesive 124 (page 10, lines 20 – 24). Next is an adhesive layer 160 which can comprise a hot melt adhesive (page 12, lines 14 – 15). The adhesive layer is attached to a reinforcement layer 158 which is preferably a nonwoven fiberglass material (page 12, lines 11 – 15). Below the reinforcement layer is a foam layer 178 which is made from a frothed polyurethane composition (page 13, lines 9 – 10 and page 14, lines 1 – 6). The final layer in the composite is a backing fabric 170 which can be a woven or nonwoven fabric made from polyester, polypropylene, nylon or fiberglass (page 13, lines 11 – 20).

Higgins fails to teach using a woven fabric as the fabric layer. The features of Vinod have been set forth above. Vinod is drawn to flooring materials. Vinod discloses using a jacquard woven fabric as the top layer of the flooring material to combine the advantages of carpet flooring material with vinyl flooring material (column 1, lines 32 – 35). These qualities include the soft, cushioning feel, and better warmth, as well as a stain-resistant surface which is easier to clean than a carpet (column 1, lines 19 – 31). Thus, it would have been obvious for one having ordinary skill in the art to substituted the decorative fabric layer for the pile fabric taught by Higgins to produce a flooring material which has a soft, cushioning feel, and better warmth than vinyl, as well as a stain-resistant surface which is easier to clean than a carpet. Therefore, claims 1 – 4, 9, 16, 18, 19, 22, and 23 are rejected.

Higgins fails to teach the composition of the pre-coat layer. Additionally, Vinod discloses that the protective coatings applied to the back of the woven fabric can include various additives such as stain-resistant material, water-repellent materials, anti-microbial coating and other additives (column 4, lines 33 – 59). Further, Vinod discloses that the coating can be an

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acrylic latex, polyurethane adhesives, or foam coating (column 4, line 66 – column 5, line 3).

Thus, it would have been obvious for one having ordinary skill in the art to apply the coating materials taught by Vinod to the woven fabric when substituting the woven fabric for the pile layer taught by Higgins. Further, adding materials such as an anti-microbial or stain-resistant components to the pre-coat layer will help the flooring material maintain a better appearance for a longer time and prevent the fabric from degrading. Therefore, claims 10 – 12 and 15 are rejected.

Further, although Higgins discloses that the reinforcing layer is a nonwoven fiberglass layer, Higgins fails to teach the nonwoven structure. Fleece materials are common nonwoven fabrics which can be made efficiently and inexpensively by needle-punching fibrous webs. Therefore, it would have been obvious for one having ordinary skill in the art to choose a fleece as the type of nonwoven material since fleece fabrics are readily available and inexpensive. Thus, claim 17 and 24 are rejected. Further, It would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the claim basis weight for the fleece fabric, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955). One would want to choose a fleece weight which will provide the required strength and support to the composite without adding too much weight or thickness to the composite. Thus, claim 25 is rejected.

20. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins and Vinod as applied to claim 9 above, and further in view of Hamilton et al..

The features of Higgins and Vinod have been set forth above. Higgins fail to teach the composition of the pre-coat layer. Hamilton et al. is drawn to flooring materials comprising a

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pre-coat layer on the back of the fibrous layer (abstract). Hamilton et al. discloses using a latex adhesive layer comprising ethylene-vinyl acetate latex, a flame retardant, a filler, a thickener, and a defoamer (column 6, lines 30 – 36). Thus, it would have been obvious for one having ordinary skill in the art to use a latex composition as described by Hamilton for the latex pre-coat layer in Higgins, since Hamilton teaches that the latex composition is used as the pre-coat layer to coat the back of the layer and attach the layer to subsequent layers in the carpet tile structure. Therefore, claim 14 is rejected.

21. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins and Vinod as applied to claim 12 above, and further in view of Blakely et al. (WO 90/14107).

The features of Higgins and Vinod have been set forth above. Higgins and Vinod fail to teach the type of anti-microbial additive used in the pre-coat layer. Blakely et al. is drawn to an anti-microbial composition used in carpet tiles (abstract). Blakely et al. discloses that the anti-microbial composition taught is resistant to bacteria growth over a period of time and the anti-microbial properties will not be lost when the carpet is cleaned or processed (page 7, lines 9 – 15). The composition taught in Example 2 comprises a phosphoric acid ester reacted with an amine to produce a salt (page 10, lines 10 – 15). Therefore, it would have been obvious for one having ordinary skill in the art to use the anti-microbial composition taught by Blakely et al. as the anti-microbial composition in the pre-coat layer since Blakely et al. discloses the carpet won't lose its anti-microbial properties after it has been cleaned or processed. Thus, claim 13 is rejected.

22. Claims 20, 21, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins in view of Vinod and Terry et al.

The features of Higgins, Vinod and Terry have been set forth above. As disclosed Higgins teaches a multi-layered carpet tile comprising a fabric layer, a pre-coat layer, an adhesive layer, a reinforcing fiber glass layer, a polyurethane foam layer, and a backing layer which can be made from a woven material comprising polypropylene. Higgins fails to teach a woven fabric layer. Vinod discloses using a woven fabric layer as the top layer of flooring material to produce a fabric which is soft and aesthetically pleasing as well as stain-resistant and easy to clean. Thus, it would have been obvious for one having ordinary skill in the art to substituted the decorative fabric layer for the pile fabric taught by Higgins to produce a flooring material which has a soft, cushioning feel, and better warmth than vinyl, as well as a stain-resistant surface which is easier to clean than a carpet. Also it would have been obvious for one having ordinary skill in the art to use an anti-microbial coating as taught by Vinod as the pre-coat layer material to increase the fabrics resistance to degradation which will increase the life of the fabric as set forth above.

Further, Higgins et al. fails to teach using a urethane modified bitumen layer. Terry et al. is drawn to a carpet tile comprising a resilient layer comprising urethane modified bitumen. Terry et al. discloses that the bitumen material produce carpet tiles which have thermosetting properties and thus are stable at high temperatures (page 4, lines 2 – 3). The bitumen is easily produced at reduced costs (page 4, lines 10 – 28). The bitumen is applied as a molten layer to the back of a carpet (page 9, lines 31 – 34). The bitumen provides a moisture and heat resistant backing which can be printed in steam or wet printing process and will not produce creep or edge distortion (page 10, lines 19 – 25). Further the bitumen layer acts as an adhesive layer between the carpet layer and the glass layer and between the glass layer and the secondary backing (page 12, lines 25 – 34). Thus, it would have been obvious for one having ordinary skill in the art to

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substitute the urethane modified bitumen layer for the adhesive layer taught by Higgins to improve the heat stability of the composite material.

Further, as set forth above, it would have been obvious for one having ordinary skill in the art to choose a nonwoven glass fleece fabric as the glass reinforcing fabric since fleece fabrics are relatively strong, readily available and inexpensively made. Therefore, claims 20, 21, 26 and 27 are rejected.

Conclusion

23. This is a continuation of applicant's earlier Application No. 09/529,464. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jenna-Leigh Befumo
February 21, 2005



CHERYL A. JUSKA
PRIMARY EXAMINER